

## RETRANSMISSION CONSENT AGREEMENT

This RETRANSMISSION CONSENT AGREEMENT (this "Agreement") is made as of January 1st, 2013, by and between **Broadcaster** (as defined below), which owns and operates the television station or stations listed in Exhibit A attached hereto (collectively, the "Stations," and individually, a "Station") and AT&T Services, Inc. on behalf of itself and its Affiliated Entities (collectively "Operator") (as defined below).

**BROADCASTER:** Communications Corporation of America Inc.

**OPERATOR:** AT&T Services, Inc., on behalf of itself and its Affiliated Entities. For purposes of this Agreement, "Affiliated Entities" means any affiliate and any person(s) or entity(ies) controlling, controlled by or under common control with Operator.

**TERM:** January 1, 2013 to 11:59pm Eastern Standard Time, December 31, 2014, unless earlier terminated pursuant to the provisions of this Agreement

**SUBSCRIBERS:** All customers (both residential and commercial) authorized by Operator to receive television services through any portion of a System.

Subject to the terms and conditions of this Agreement, Broadcaster hereby grants to Operator the non-exclusive right to retransmit each Broadcast Signal, each in its entirety, to each receiver connection of each Subscriber that is connected to a System as defined herein. Operator shall have no right or obligation to retransmit any portion of the Broadcast Signal to any receiver to which Broadcaster has not granted consent in the foregoing sentence. Broadcaster and Operator acknowledge that Broadcaster elected retransmission consent with respect to each portion of the System and each portion of the Broadcast Signal for the entire Term hereof.

In consideration of the foregoing and of the mutual covenants and agreements set forth in this Agreement, the parties agree to the terms and conditions set forth herein, including Exhibit A and Exhibit B, both of which shall be considered a part of this Agreement for all purposes and may not be modified without the prior written consent of each party hereto.

Communications Corporation of America:

AT&T Services, Inc.:

By:



Name:

Greg Balaban

Title:

Secretary

By:



Name:

Darnisa S. Lee

Title:

Sr. Contract Manager  
12.31.2012

**EXHIBIT A****Notices:**

	<b>BROADCASTER</b>	<b>OPERATOR</b>
<b>COMPANY</b>	Communications Corporation of America	AT&T Services, Inc.
<b>ADDRESS</b>	767 Third Avenue, 34 <sup>th</sup> Floor New York, NY 10017	4119 Broadway Room 650A20V San Antonio, TX 78209 Attn: Sr. Contract Manager Facsimile: (210) 882-3032  with copies to:  AT&T Services, Inc. 1025 Lenox Park B'ld., 5 <sup>th</sup> Floor C562 Atlanta, GA 30319-5309 Attn: Entertainment Counsel  AT&T Services, Inc. 1880 Century Park East, Ste. 1101 Los Angeles, CA 90067 Attn: President Content and Advertising Sales
<b>CONTACT NAME</b>	Duane Lammers	
<b>CONTACT PHONE</b>	212-826-2530	

**With Payments to:**

Same as Notice Address Above

**Rate (per subscriber per month):**

Network Affiliation	2013	2014	
ABC/NBC/CBS/FOX	\$1.00	\$1.15	
CW	\$0.36	\$0.38	
MyNetwork	\$0.30	\$0.32	

**Station(s) and System(s):**

Unless the context requires otherwise, references to a Station or the Station shall refer only to those particular Stations (i) that are assigned to the same Designated Market Area ("DMA") as a System (or portion of a System) and/or (ii) that are "significantly viewed" (as defined by the Federal Communications Commission ("FCC") in the area served by such System (or portion of a System). The System(s) covered by this Agreement are listed below. Operator shall furnish to Broadcaster a revised list within thirty (30) days of any additions or other permitted modifications thereto.

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Station	DMA/System	Channel Position	
		SD Tier	HD Tier
KTSM	El Paso	9	1009
KDBC	El Paso	4	1004
KPEJ	Odessa-Midland	24	1024
WBRL	Baton Rouge	21	1021
WGMB	Baton Rouge	44	1044

## **EXHIBIT B**

### **Standard Terms and Conditions**

#### **1. Definitions.**

(a) **"Broadcast Signal"** means, in each case, the digital broadcast signal of the applicable Station (including video, accompanying audio, and Program Related Material) in a form compliant with Advanced Television Systems Committee ("ATSC") standards, which includes at least one channel containing high-definition format (as defined by the ATSC) video and audio programming, and, at Broadcaster's sole discretion, also may include one or more additional channels of video and audio programming, whether in high-definition format or otherwise (each, a **"Multicast Channel"**).

(b) **"HD Broadcast Stream"** means any program stream of any broadcast station that is broadcast in high definition format.

(c) **"Primary Channel"** means the digital program transport feed within a Broadcast Signal that has been designated by Broadcaster as such Station's "primary channel" consistent with FCC and industry standards.

(d) **"Program-Related Material"** means (i) closed-captioning information, (ii) program identification codes, watermark(s), redistribution control information and/or copy control information, (iii) program ratings information, (iv) up to one second language audio for the program then being broadcast, (v) such other material as may be essential to or necessary for the delivery or distribution of the Broadcast Signal, (vi) information and material directly associated with specific programming and/or commercial advertisements contained in a Station's broadcast program schedule, if such information or material is transmitted concurrently or substantially concurrently with its associated programming and/or commercial advertisement, and (vii) any material that Operator is required to retransmit by the FCC or other applicable law.

(e) **"Retransmitted Feed"** means each digital program transport feed within a Broadcast Signal that is required to be, or that is, retransmitted by the applicable System.

(f) **"SD Broadcast Stream"** means any program stream of any broadcast station that is broadcast entirely in standard definition digital format.

(g) **"System"** means each multichannel video programming distribution system (as defined in Section 602 of the Communications Act of 1934, as amended) owned and/or operated by Operator at any time during the Term hereof (as may be modified or extended) that (i) provides multichannel video services through traditional cable, DSL and/or Internet protocol technology to residential and/or commercial locations via closed signal paths to the Operator's customers; (ii) qualifies as a "cable system" under 17 U.S.C. § 111(f); and (iii) serves areas located within a Station's DMA and/or within counties in which a Broadcast Signal has "significantly viewed" status (as defined by the FCC), in all cases regardless of any pre-existing retransmission consent agreement as to the Station. Notwithstanding anything to the contrary, the term "System" shall not include any distribution system that is not included in the foregoing definition, including (y) any distribution system utilizing the public Internet or (z) any wireless distribution to mobile phones or other portable or mobile devices, whether inside or outside the home and without regard to whether simultaneous with the Station's free, over-the-air linear broadcast. Each System that is acquired or built by Operator subsequent to the date hereof, or that otherwise qualifies as a System pursuant to this paragraph, shall be a **"Subsequently Acquired System."** Operator warrants that each System that retransmits or is required to retransmit any portion of a Broadcast Signal is listed on **Exhibit A** attached hereto.

(h) As used in this Agreement, the term "Broadcast Signal" specifically excludes any content, information or material for which Broadcaster or the Station receives or seeks a fee from Operator, any System or any Subscriber; any data-casting, ancillary or supplementary services or other non-broadcasting services; any interactive element or transactional application that requires the functionality of a two-way cable plant; any material transmitted in ATSC-M/H standard; or material which would not be displayed on standard television reception devices receiving a Broadcast Signal off-the-air.

**2. Retransmission of Broadcast Signal**

(a) Pursuant to Section 325(b)(1) of the Communications Act of 1934, as amended, and Section 76.64 of the rules and regulations of the FCC, Broadcaster and each Station grant their consent to Operator with respect to each such Station, to (i) retransmit the Station's Broadcast Signals on the System in such Station's DMA and at Operator's sole option, in any significantly viewed areas (as defined by the FCC) during the Term in accordance with the terms of this Agreement; (ii) advertise, market and promote the availability of the Station through the System via television, radio, print, Internet or other media advertising, including using each Station's channel number, call letters and/or logo, names and logos of programming carried by the Station, and any other promotional materials or uses authorized and approved in writing by Broadcaster from time to time; and (iii) offer its Subscribers the capability of utilizing Subscriber-initiated applications, such as overlays and shrinkbacks; provided that such capability affects the Station's audio and video presentation in a manner no worse than any other retransmitted broadcast television station. For illustrative purposes, subscriber initiated overlays include, without limitation, the appearance of caller I.D. information, program reminders initiated by the Subscriber, etc. Broadcaster hereby notifies Operator that Broadcaster does not have authority under its network affiliation agreements to grant consent to Operator to retransmit any Retransmitted Feed affiliated with the Fox network or any Multicast Channel on any System located wholly outside of a Station's DMA. Therefore, notwithstanding anything in this Agreement to the contrary, Broadcaster does not grant consent to Operator to retransmit any Fox-affiliated Retransmitted Feed or any Multicast Channel for a Station on a System wholly outside of a Station's DMA. In addition, Broadcaster does not grant consent to Operator to retransmit any other Retransmitted Feed on a System wholly outside of the pertinent Station's DMA if such grant of consent would violate Broadcaster's network affiliation agreement for such Retransmitted Feed provided that, (i) Broadcaster provides Operator of seventy-five (75) days' notice of such restriction and (ii) Broadcaster also enforces such restriction against cable and satellite television systems in the affected geographic areas.

(b) *General Obligation.* Provided that a System headend then receives (at Operator's expense) the Broadcast Signal from the originating Station (including via translators or other alternative means) that meets or exceeds the good quality signal standard (as defined by the FCC), then such System shall retransmit the Station's Primary Channel and, if otherwise required under this Agreement, such Multicast Channel to each lawful receiver connection of each Subscriber that is connected directly and lawfully to the System as follows:

(i) High Definition. A System that retransmits in high definition digital format any HD Broadcast Stream shall retransmit in high definition format each program stream within a Broadcast Signal that is broadcast in high definition format.

(ii) Standard Definition. A System that retransmits in standard definition digital or analog format any HD Broadcast Stream shall down-convert each program transport stream within a Broadcast Signal that is broadcast in high definition format and retransmit in standard definition or analog format such down-converted program stream such that the Retransmitted Feed is viewable by all Subscribers of the pertinent System. For the avoidance of doubt, this down-conversion obligation shall be in addition to, and not in lieu of, Operator's obligation (if any) in Section 2(b)(i).

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(iii) A System that then retransmits in standard definition digital format any SD Broadcast Stream shall retransmit in standard definition format each program stream within a Broadcast Signal that is broadcast entirely in standard definition format.

(iv) Each Retransmitted Feed that is retransmitted in digital format shall be carried in the same channel neighborhood and level of service as other comparable (*e.g.*, same genre) program transport streams of other retransmitted television stations that are broadcast in the same format (*i.e.*, standard definition or high definition) and shall appear on a channel selected by the System in a manner that is comparable to and non-discriminatory with respect to the manner in which such System selects channel positions for other comparable local broadcast program streams. Notwithstanding anything to the contrary herein, Operator shall retransmit each Station's Primary Channel in standard definition or analog format on the channel position specified in Exhibit A.

(c) *Exceptions.* Notwithstanding anything to the contrary herein, (i) Operator shall have no obligation to retransmit any Multicast Channel other than as follows. If Operator retransmits any other multicast channel of another local commercial broadcast station in the same DMA as Station, Operator shall retransmit Station's Multicast Channel provided that (i) Operator shall have no obligation to launch a Station's Multicast Channel that is affiliated with ABC, NBC, CBS, or FOX (each a "Big 4 Network") until the date on which Operator commences carriage of any other broadcast station's multicast channel which is affiliated with a Big 4 Network in the Station's DMA, and provided further, (ii) Operator shall have no obligation to launch a Station's Multicast Channel that is affiliated with the CW or MyNetwork until the date on which Operator commences carriage of any broadcast station's multicast channel which is affiliated with the CW or MyNetwork in the Station's DMA, and provided further, (iii) Operator shall have no obligation to launch a Station's Multicast Channel that is not affiliated with either a Big 4 Station, CW, or MyNetwork until the date on which Operator commences carriage of any commercial broadcast station's multicast channel which is not affiliated with either a Big 4 Network, CW, or MyNetwork. In no event shall Operator be obligated to retransmit a greater number of Multicast Channels of a Station than the total number of multicast channels of any other single broadcast station retransmitted by Operator in such Station's DMA; and, provided further, Operator shall not be required to carry a Multicast Channel that : (1) consists primarily of a program channel related to the sale of good or services directly to consumers; (2) consists primarily of a program channel containing more than eight (8) hours per day of religious or infomercial programming (excluding overnight hours between 1:00am and 6:00am); (3) consists of a substantively duplicative program channel carried by Operator; (4) is not broadcast on a full-time (twenty four (24) hours a day, seven (7) days per week) basis; or (5) is a service for which subscribers pay the Station a fee.

### 3. Manner of Retransmission

(a) If a System retransmits any portion of the Broadcast Signal, such System shall retransmit each Retransmitted Feed in its entirety, without editing, time delay, interruption, alteration, superimposition, acceleration, or deletion, and otherwise in the technical manner required for digital must-carry stations, except as may be required by the FCC and except as otherwise permitted under this Agreement. Each Retransmitted Feed shall appear, from the viewer's perspective, to be a separate channel. Under no circumstances shall Operator remove any electronically-generated (by a Chyron or other graphics generating equipment) network, Station or program logos and/or identifiers contained within any portion of a Broadcast Signal.

(b) Each System shall comply with all then-applicable FCC rules and industry standards. In all cases, Operator shall ensure that the quality of each Retransmitted Feed on each System, from an average viewer's perspective, is not materially lower than that of the corresponding digital broadcast signal of any other retransmitted television station that is broadcast in the same format and at the same

data rate, signal quality and signal strength as such Retransmitted Feed (but in no event shall the signal quality as retransmitted by a System be required to be superior to the quality of such signal as received by such System from the Station).

(c) When Operator down-converts any portion of a Broadcast Signal, Operator shall use commercially reasonable efforts to ensure that the resulting picture of any such down-conversion does not omit any content of the original picture (except that Operator may crop the picture), does not materially distort the content of the original picture, and does not have a lower quality audio or picture than the down-converted signal of any other retransmitted television station, in each case from an average viewer's perspective.

(d) Operator shall have the right to transcode the Broadcast Signal to an advanced CODEC consistent with all other broadcast channels retransmitted by each System. Any such transcoding or multiplexing will not materially degrade or interfere with the video and audio quality of the Broadcast Signal from an average viewer's perception or reduce the data flow included in such Retransmitted Feed (other than as may naturally occur due to IPTV retransmission), and provided further that Operator shall not down-convert the digital resolution format of any Retransmitted Feed to a lower resolution format (except to the extent specifically required herein).

(e) In the event that a party discovers a signal strength or signal quality deficiency, such party shall notify the other party's chief operator/engineer as soon as reasonably practical by telephone, and the party responsible for such issue shall undertake commercially reasonable efforts to rectify the matter as soon as reasonably possible; provided, that a party's failure to notify the other party as set forth herein shall not constitute a breach hereunder so long as such party, if applicable, undertakes such corrective efforts.

#### **4. Additional Terms.**

(a) As required under the FCC's rules, Operator shall comply with network non-duplication and syndicated exclusivity for each Broadcast Signal. To the full extent permitted by the FCC's rules, the parties agree that Operator shall not force-tune, preempt, override, interrupt, or alter Emergency Alert Service ("EAS") messages, news, or weather related emergency information that a Station provides through or during a System's transmission of a state or local EAS message or alert over any channel that is retransmitted in digital format. Notwithstanding the foregoing, Broadcaster and each Station acknowledge that Operator's agreement not to preempt, override, or interrupt a Station's Signals for EAS messages, alerts, or tests is subject to Operator's compliance with all applicable laws, rules and regulations including, without limitation, any applicable licensing authority.

(b) Upon request by Operator, Station shall provide program listing information to Operator's FYI Channel Television, provided that such delivery does not impose an incremental cost to Broadcaster. If Operator maintains an electronic programming guide over which Operator has editorial control and that is primarily intended to be viewed on television sets, the call letters, logo, and program schedule for each Retransmitted Feed shall be included in such guide in a manner reasonably comparable to those of other local broadcast television stations distributed by the System (if the Station provides Operator with such comparable information and data).

(c) If Operator provides cable service to a Station's main studio and/or main transmission facility, Operator shall provide, at no cost to Broadcaster, a complimentary lifeline account for each such location (and any necessary converter equipment) for the limited purpose of enabling the Station's engineering staff to monitor the technical integrity of the Broadcast Signal on the System.

(d) During the term of this Agreement, Broadcaster (or any entity controlling, controlled by or under common control with Broadcaster) may acquire, manage, program, or otherwise obtain the right to grant retransmission consent for a television station not currently listed in Exhibit A and licensed to a community in the same DMA as a Station (an “**Additional Station**”). Effective as of the date upon which such Additional Station first becomes an Additional Station, (i) such Additional Station shall be added to Exhibit A hereto and included as a Station hereunder; (ii) any system that qualifies as a System hereunder with respect to such Additional Station shall be added to Exhibit A as a System; and (iii) any other agreement with respect to such Additional Station to which Operator is a party shall be deemed terminated with respect such system and such Additional Station, notwithstanding anything contained in any such other agreement.

(e) At such time as Broadcaster makes programming for a Station available on a TV Everywhere (“**TVE**”) basis, as that term is commonly used in the industry, to other multichannel video programming distributors in the Station’s DMA, it shall so notify Operator and negotiate in good faith concerning an agreement to provide Operator with substantially similar TVE rights. Nothing in this Agreement shall prohibit Operator from employing wireless set-top boxes (i) that utilize wireless HDMI or other wireless transmission using content protection by HDCP and (ii) that have direct wired connections to a Subscriber’s television receiver.

## 5. Fees.

(a) Operator shall pay to Broadcaster a monthly fee (the “**Rights Fee**”) during the Term which shall be calculated by multiplying the Rate set forth in Exhibit A for each Retransmitted Feed by the average number of Subscribers to which Operator retransmits such Retransmitted Feed during the calendar month. The average number of Subscribers in a month shall be equal to the number of Subscribers on the last day of the prior month plus the number of Subscribers on the last day of the applicable month, divided by two. The Rights Fee shall be pro rated for any period constituting less than one full calendar month.

(b) For the avoidance of any doubt, a Subscriber that receives from a System multiple Retransmitted Feeds of a Big 4 Network or MyNetwork or CW shall be counted separately for each Retransmitted Feed. For example, if a System retransmits a Station’s Primary Channel affiliated with ABC and an additional Multicast Channel of the same Station that is Fox’s principal broadcast television network affiliate, then the Rights Fee shall be the sum of the fee due for the ABC Retransmitted Feed plus the fee due for the Fox Retransmitted Feed. The number of Subscribers per multiple dwelling complex (such as apartments, hotels, motels, hospitals, and universities) shall equal the total monthly bulk-rate charged by Operator to the pertinent complex for the level of service containing the Broadcast Signal, *divided by* the basic monthly rate charged by Operator for the comparable level of service to residential Subscribers, except that (i) the number of Subscribers in any complex shall never be less than one, and (ii) each individual unit of a multiple dwelling complex that receives a separate bill or invoice from a System for the level of service that includes a Broadcast Signal shall be deemed an individual Subscriber.

(c) Payment of the Rights Fee for each month shall be made no later than forty-five (45) days following the end of the month for which payment is due to the address provided for Broadcaster in **Exhibit A**. Operator may exclude the following Subscribers from the total number of Subscribers each month for purposes of calculating the Rights Fee (“**Excluded Subscribers**”): (i) employees of Operator who are not charged for the level of service in which Station’s Broadcast Signal is distributed; (ii) public officials or public buildings (including, without limitation, schools) that are not charged for the level of service in which the Station’s Broadcast Signal is distributed; (iii) customers that are scheduled for disconnection due to non-payment; and (v) persons who are illegally obtaining service from a System without Operator’s knowledge. The total number of Excluded Subscribers (but excluding clause (v)) shall not exceed one percent 1.0% of the total Subscribers for a particular month. With each payment of

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the Rights Fee, Operator shall provide a monthly statement, certified by an authorized representative of Operator, that accurately identifies, to the best of Operator's knowledge, the number of customers who qualify as Subscribers under this paragraph on each System subject to this Agreement. The acceptance by Broadcaster of reports and payments shall not be deemed an acceptance of the accuracy of such reports or as a waiver of any rights hereunder. Operator shall keep true and accurate books and records directly relating to the consideration for a period of one year following the expiration of the Term. Broadcaster or its authorized representative shall have the right to inspect and copy any such books and records kept by Operator directly related to the payment of Rights Fees pursuant to this Agreement at Operator's offices, during normal business hours, upon thirty days' prior written notice. Broadcaster's right to perform such audit shall be limited to no more than once in any consecutive twelve (12)-month period. Any such audit shall be limited to an audit with respect to amounts to be paid in the current calendar year and immediately preceding calendar year only. Any claim with respect to such amounts (which must relate to the then-current calendar year or the immediately preceding calendar year) must be made within the earlier of: (i) three (3) months after Broadcaster leaves Operator's offices, or (ii) twenty-four (24) months after the close of the earliest month that is the subject of a claim, or Broadcaster will be deemed to have waived its right, whether known or unknown, to collect any shortfalls from Operator for the period(s) audited. Past due payments shall bear interest at a rate that is the lower of one and a half percent per month or the highest interest rate allowed by law. Operator shall be liable for all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees) incurred by Broadcaster in collecting any past due payments. Notwithstanding anything to the contrary herein, if Broadcaster audits the books and records of Operator as permitted by this Section 5, such audit shall be at Broadcaster's sole expense unless it reveals that Operator has underpaid Broadcaster by more than five percent (5%), in which case Operator shall reimburse Broadcaster for all reasonable costs related to the audit.

(d) Neither party hereto shall charge or seek to charge any System subscriber a separate fee for receipt of or the ability to view all or any portion of the Broadcast Signal without the prior written consent of the other party hereto. The parties agree that a charge levied by Operator for a technological access fee, set-top box, decoder and/ or other hardware or equipment, for installation, or for the tier, level or package on which any of the Broadcast Signals is retransmitted shall not be considered a "fee" for purposes of this Section.

## **6. Reservation of Rights.**

(a) This Agreement conveys to Operator only those rights that are expressly stated herein. Nothing herein shall affect any other rights that a Station may have in relation to Operator or the Systems, including but not limited to syndicated exclusivity or network non-duplication rights. As between Broadcaster and Operator, all rights in and to the programming delivered hereunder, including, but not limited to, the Station's programming, copyright, trademarks, service marks and all other proprietary rights not specifically granted to Operator (but excluding any intellectual property of Operator or its affiliates that may be included therein), are reserved to Broadcaster for its exclusive use. Broadcaster hereby authorizes Operator to use the service marks, trademarks, trade names and logos of the Station(s) in printed or electronic program guides, program listings, channel line-ups, web sites, bill stuffers and other promotional materials, unless Broadcaster specifically notifies Operator to the contrary.

(b) It shall remain the obligation of Operator to ensure, and Operator warrants that it will so ensure, that Operator's retransmission of all copyrighted programs included in the Broadcast Signal is appropriately licensed for retransmission on the Systems under 17 U.S.C. §111 or otherwise, it being understood, however, that each Station shall be solely responsible for obtaining all necessary rights for the exhibition of all materials included in such Station's Broadcast Signals on over-the-air broadcast television. Notwithstanding anything to the contrary contained in this Agreement, Operator shall have no obligation to retransmit any Broadcast Signal of a Station in any geographical area if such retransmission

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subjects Operator to an increase in its compulsory copyright fee resulting from the designation of such Station's signal as being distant. For the avoidance of doubt, nothing in this Agreement shall be construed as granting to Operator any license from Broadcaster, its program suppliers, or any other party, with respect to any incidental caching or storage of any portion of the Broadcast Signal but the parties acknowledge that Operator's Systems utilize an Internet Protocol for broadcast signal retransmission and that incidental caching and storage of portions of the Broadcast Signal may occur but that any such caching and storage shall be consistent with the caching and storage of other broadcast signals retransmitted by the System(s). The parties further acknowledge that Broadcaster does not have authority from its program suppliers to grant a license (and therefore does not grant a license) to Operator for such incidental caching and storage. Accordingly, any incidental caching and storage is performed pursuant to the compulsory copyright license or other provision under copyright law.

(c) Except as otherwise set forth in this Agreement, Operator shall not, for pay or otherwise, record, copy, duplicate and/or knowingly authorize the recording, copying, duplication or retransmission of any portion of the Broadcast Signal or any other programming provided to Operator hereunder without Broadcaster's prior written permission. Operator shall notify Broadcaster if it becomes aware of a third party performing such unauthorized recording, copying, duplication or retransmission, other than for private home use. Nothing in this Agreement shall restrict Operator's right to (i) assist in connecting Subscribers' recording devices such as VCRs and DVRs and/or (ii) providing Subscribers with set-top boxes, digital video recorders and other devices and cable network functionalities and/or establishing connections to Subscribers' consumer electronics devices, including without limitation those that are intended for duplication of video or audio programming, or to provide subscribers with VCR-like functionality to the extent permitted by then-existing law without any license from Broadcaster, its program suppliers or any other party, which such license is expressly not granted herein.

## **7. Termination.**

(a) A default shall occur if either party (i) makes a material misrepresentation or warranty or (ii) fails to perform or observe in any material respect any other term, covenant, or other provision of this Agreement. If such default continues for a period of 15 days after the defaulting party's receipt of written notice of such default, then, in addition to all other rights and remedies the non-defaulting party may have, such non-defaulting party shall have the right to suspend its performance under this Agreement, until such default or failure is remedied, and/or to terminate this Agreement by written notice to the defaulting party.

(b) Except with respect to each party's indemnification and confidentiality obligations under this Agreement, neither Broadcaster nor Operator shall be liable to the other for incidental, consequential, indirect or special damages in any cause of action arising out of or related to this Agreement.

(c) Operator acknowledges that its obligations hereunder are specific and unique in character and have a peculiar value and that a failure by Operator to fulfill its commitments under this Agreement including, without limitation, the signal carriage obligations set forth herein, will cause irreparable damage to Broadcaster that cannot be compensated in monetary damages. Operator therefore agrees that Broadcaster shall be entitled to obtain specific performance of Operator's obligations under this Agreement as an appropriate remedy in the event of a material breach of the terms of this Agreement by Operator.

## **8. Representations and Warranties.**

(a) Broadcaster and Operator each represent, warrant and covenant to the other that: (i) it is a corporation duly organized, validly existing and in good standing under the laws of the State of its incorporation; (ii) it is under no contractual or other legal obligation which will in any way interfere with  
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its full, prompt and complete performance hereunder; (iii) the individual executing this Agreement has the authority to do so; (iv) it has the power and authority, and the rights, to enter into this Agreement and to fully perform its obligations hereunder; and (v) that it will comply with all applicable laws, rules and regulations.

(b) Broadcaster further represents, warrants and covenants that none of the programming provided under this Agreement will violate any FCC broadcast rule or regulation or will violate or infringe the civil or property rights, copyrights (including, without limitation, music synchronization and performance rights and dramatic and non-dramatic music rights), trademark rights, patent rights or rights of privacy of any person.

(c) Operator further represents, warrants, and covenants that its retransmission of all copyrighted programs included in each Station's Broadcast Signals is licensed for retransmission on the applicable System, under compulsory copyright license pursuant to 17 U.S.C. §111 in accordance with Section 6(b) and it owns all right, title, and interest in and to Operator's copyrights, trademarks, service marks, logos and trade names.

## **9. Indemnification.**

(a) Broadcaster and Operator shall each indemnify, defend and forever hold harmless the other, the other's affiliated companies and their respective officers, directors, employees, partners, members and agents, against and from any and all claims, actions, suits, proceedings, investigations, judgments, awards, settlements, losses, damages, and liabilities (each, a "Loss") that are sustained or incurred by or asserted against any of them and that arise out of any breach by it of any representation, warranty, covenant or agreement set forth in this Agreement, and shall reimburse them for any and all legal, accounting and other fees, costs and expenses (including, without limitation, reasonable counsel fees, disbursements and court and administrative costs) reasonably incurred by any of them in connection with investigating, mitigating or defending any such Loss. The indemnities contained in this section shall survive the expiration or termination of this Agreement.

(b) Without limiting the foregoing, Broadcaster shall indemnify and hold harmless Operator and Operator's Representatives from and against any and all Losses arising out of the content of the broadcast signal or retransmission of any Station's signal to the extent that such Losses are based upon alleged or actual libel, slander, defamation, invasion of the right of privacy or violation or infringement of copyright, trademark or music synchronization or performance rights.

(c) Promptly after a party's receipt of notice of the commencement of any action, suit, proceeding or investigation in respect of which a claim for indemnification may be made hereunder, such party will give written notice thereof to the other party; but the failure to so notify the other party will not relieve the other party from any liability or obligation which the other party may have to any indemnified person except to the extent of any material prejudice to the other party resulting from such failure. If any such action, suit, proceeding or investigation is brought against an indemnified person, the indemnifying party will be entitled to participate therein and to assume the defense thereof with counsel satisfactory to the indemnified person (who shall not, except with the consent of the indemnified person, be counsel to the indemnified person), provided it gives written notice to the indemnified person of its election so to assume the defense thereof within fifteen days of receiving notice of the claim. Each indemnified person will be obliged to cooperate reasonably with the indemnifying party, at the expense of the indemnifying party, in connection with such defense and the compromise or settlement of any such action, suit, proceeding or investigation.

**10. Assignment.** The rights and obligations of Broadcaster and Operator under this Agreement shall be binding on both parties and their respective successors, transferees and assignees. Neither party shall

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assign, by operation of law or otherwise, this Agreement without prior written consent of the other party, which shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, no consent shall be necessary in the event of assignment to: (i) an entity controlling, controlled by, or under common control with such party; (ii) a successor entity resulting from a merger, acquisition, or consolidation by either party; or (iii) a party acquiring all or substantially all of the assets for a System or a Station. In the event the Operator assigns or transfers control of all or part of its interest in any portion of a System, or the ownership of a Station is transferred or assigned in accordance with this Section 12, any permitted assignee or transferee thereof shall assume, be bound by and perform this Agreement in its entirety with respect to such System or Station, as applicable, unless the assignee or transferee has a retransmission consent agreement that expressly requires inclusion of such System or Station. This Agreement shall inure to the benefit of and be binding on the respective successors, transferees and assigns of the parties hereto. The foregoing provisions of this Section 10 shall apply to each permitted successor, assign or transferee in the event of successive or multiple sales or transfers of Systems or Stations.

**11. Confidentiality.** The terms and conditions of this Agreement, with the exception of the existence of the Agreement, and any data reported in connection herewith, will be kept confidential by the parties hereto and will not be disclosed by either party to any third party (other than the receiving party's employees, officers, attorneys, auditors, or agents, provided that such employees, officers, attorneys, auditors, and agents agree to be bound by the provisions of this Section 11), except (i) as may be required by any court order or governmental agency or pursuant to applicable law or regulations, in which event the receiving party shall so notify the disclosing party as promptly as practicable (and, if possible, prior to making any disclosure) and shall in all cases seek confidential treatment and redaction to the greatest extent possible of such information; (ii) as part of a party's normal reporting requirements to its accountants, auditors, agents, legal counsel and affiliates, or to potential purchasers of all or substantially all of its assets or business, if such receiving person first agrees in writing to abide by this confidentiality clause; or (iii) as necessary for a party to enforce its rights under this Agreement. Neither party shall issue any press release relating to the business relationship of the parties as set forth herein except with advance written approval of the other party.

**12. Force Majeure.** No delay, preemption or other failure to perform caused by factors beyond the affected party's reasonable control, including, without limitation, acts of God, labor dispute, non-delivery by program suppliers, war, riot, technical breakdown, or government order or regulation shall constitute a default or breach of this Agreement. The affected party shall exercise its reasonable efforts to cure any such delays and the cause thereof, and the parties' performance under the terms of this Agreement shall be excused for the period of time during which such Force Majeure event continues so long as such curative efforts are reasonably pursued.

13. **Relationship of the Parties.** Nothing in this Agreement shall create any joint venture or principal-agent relationship between Broadcaster and Operator. Nothing contained herein shall be deemed to create, and the parties do not intend to create, any relationship of partnership, and neither party is authorized to or shall act toward third parties or the public in any manner which would indicate any such relationship. Under no circumstances shall this Agreement be construed or interpreted as an exclusive dealing agreement by either party. Nothing in this Agreement shall be construed as to restrict either party from entering into any agreement with any third party, even if similar to or competitive with the transactions contemplated hereunder. In addition, notwithstanding anything to the contrary in this Agreement, nothing herein shall constitute nor be interpreted as a waiver of either party's right to engage in any lawful conduct or to provide any lawful service or product for which the other party's consent or authorization is not required. No Subscriber shall be deemed to have any direct or indirect contractual relationship with Broadcaster by virtue of this Agreement, nor shall any Subscriber or other third party be deemed to be a third party beneficiary of this Agreement.
14. **Notices.** Any notices required by this Agreement shall be in writing and shall be delivered to the appropriate address listed in **Exhibit A**. Notices shall be deemed delivered when personally delivered, or if mailed by certified or registered mail, when the United States Postal Service confirms receipt, or if sent courier or express mail service, when such courier or express mail service confirms delivery.
15. **Non-Recourse.** Notwithstanding anything to the contrary in this Agreement, it is expressly understood and agreed by the parties that each and every representation, warranty, covenant, undertaking and agreement made in this Agreement was not made or intended to be made as a personal representation, undertaking, warranty, covenant, or agreement on the part of any individual, incorporator, stockholder, director, officer or partner, past, present or future, or any of them, all of which recourse, whether in common law, in equity, by statute or otherwise, is hereby forever waived and released.
16. **Severability.** If any provision of this Agreement shall hereafter be held to be invalid or unenforceable, in whole or in part, in any jurisdiction, such provision shall be: (i) enforced to the maximum extent permitted under applicable law; and (ii) reformed to the extent possible to cause such provision to be valid and enforceable, while preserving the intent of the parties as expressed in, and the benefits to the parties provided by, this Agreement; or (iii) if such provision cannot be so reformed, such provision shall be severed from this Agreement and an equitable adjustment shall be made to such Agreement so as to give effect to the intent so expressed and the benefits so provided. The determination that any provision of this Agreement is invalid or unenforceable in one jurisdiction will not affect the validity or unenforceability of such provision in any other jurisdiction or under any other circumstances. Neither any such holding, reformation nor severance of an invalid or unenforceable provision of this Agreement, shall affect or impair the validity and/or enforceability of any other provision of this Agreement.
17. **Complete Agreement.** This Agreement, and all collateral matters relating thereto, shall be enforced and construed under the laws of the state of New York (without regard to the conflict of laws provisions thereof), applicable to agreements fully made and performed therein, subject to applicable provisions of the Communications Act of 1934, as amended, and the applicable rules and regulations of the FCC. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous, express or implied, written or oral, agreements, representations and understandings between the parties. This Agreement may only be renewed, extended, modified or amended by a written instrument signed by the parties. No waiver of this Agreement shall be deemed to have occurred, nor shall any breach be deemed excused, unless the waiver or excuse is in writing and signed by the party against whom the waiver or excuse is to be asserted. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement. This
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Agreement may be signed in multiple counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement.